

REQUEST FOR PROPOSAL (RFP)

Date Mailed: July 12, 2005

RFP Number: 2005-01

Closing Date: August 15, 2005

Procurement Officer: Aurora Shields
Telephone: 785-296-6198
E-Mail Address: ashields@kdhe.state.ks.us
Web Address: <http://kdhe.state.ks.us/envlab>

Item: Environmental Laboratory Assessment

Agency: Kansas Department of Health and Environment
Location(s): 740 Forbes Field
Topeka, KS 66620-0001

Period of Contract: September 1, 2005 through August 31, 2006
(With one (1) additional optional one-year renewal period)

Guarantee: No Monetary Guarantee Required

Scope: This Contract shall cover the procurement of third party laboratory assessors for the Kansas Department of Health and Environment (KDHE), Division of Health and Environmental Laboratories (DHEL), Environmental Laboratory Improvement Program Office (ELIPO) during the contract period referenced above.

READ THIS REQUEST CAREFULLY

Failure to abide by all of the conditions of this Request may result in the rejection of a bid. Inquiries about this Request should indicate the contract number and be directed to the procurement officer.

SIGNATURE SHEET

Item: **Environmental Laboratory Assessment**

Agency: Kansas Department of Health and Environment (KDHE), Division of Health and Environmental Laboratories (DHEL), Environmental Laboratory Improvement Program Office (ELIPO)

Closing Date: August 15, 2005

We submit a proposal to furnish requirements during the contract period in accordance with the specifications and Schedule of Supplies. **I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one which a reasonable person would think would compromise the open competitive bid process.**

Addenda: The undersigned acknowledges receipt of the following addenda:

#1(____) #2(____) #3(____) None(____)

Legal Name of Person, Firm or Corporation_____

Toll Free Telephone_____Local_____Fax_____

E-Mail_____

Mailing Address_____

City & State_____Zip Code_____

Signature_____Date_____

Typed Name of Signature_____Title_____

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

Address_____

City & State_____Zip Code_____

Toll Free Telephone_____Local_____Fax_____

E-Mail_____

This pricing is available to Political Subdivisions of the State of Kansas.

Yes_____ No_____ (Refusal will not be a determining factor in award of this Contract)

Agencies **may** use State of Kansas Business Procurement Card for purchases from this contract.

Yes_____ No_____ (Refusal will not be a determining factor in award of this Contract)

COST PROPOSAL

SECTION I
CONDITIONS TO BIDDING

- 1.1 **Proposal Reference Number:** The above number has been assigned to this Request and **MUST** be shown on all correspondence or other documents associated with this Request and **MUST** be referred to in all verbal communications. All inquiries, written or verbal, shall be directed to the procurement officer only.

Aurora Shields

Telephone: 785-296-6198
Facsimile: 785-296-1638
E-mail Address: ashields@kdhe.state.ks.us
Kansas Department of Health and Environment
740 Forbes Field
Topeka, KS 66620-0001

No communication is to be had with any other State employee regarding this Request except with designated state participants in attendance **ONLY DURING:**

Negotiations
Contract Signing
as otherwise specified in this Request.

Violations of this provision by vendor or state agency personnel may result in the rejection of the proposal.

- 1.2.1 **Negotiated Procurement:** Final evaluation and award is made by the Procurement Negotiation Committee (PNC) or their designees, which consists of the following:

Richard Howard
Jack Mckenzie
Aurora Shields

- 1.2.2 **Appearance Before Committee:** Any, all or no vendors may be required to appear before the PNC to explain the vendor's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award to the low bidder without conducting negotiations. The PNC reserves the right to request information from vendors as needed. If information is requested, the PNC is not required to request the information of all vendors.

Vendors selected to participate in negotiations may be given an opportunity to submit a best and final offer to the PNC. Prior to a specified cut-off time for best and final offers, vendors may submit revisions to their technical and cost proposals. Meetings before the PNC are not subject to the Open Meetings Act. Vendors are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered part of the vendor's best and final offer.

No additional revisions shall be made after the specified cut-off time unless requested by the PNC.

- 1.3 **Questions/Addenda:** No pre-proposal conference is scheduled for this Request for Proposal. Questions requesting clarification of the Request for Proposal must be submitted in **WRITING** to the Procurement Officer prior to the close of business on **July 30, 2005** to the following address:

Aurora Shields
Telephone: 785-296-6198
Facsimile: 785-296-1638
E-mail Address: ashields@kdhe.state.ks.us
Kansas Department of Health and Environment

740 Forbes Field
Topeka, KS 66620-0001

Failure to notify the Procurement Officer of any conflicts or ambiguities in this Request for Proposal may result in items being resolved in the best interest of the State. Any modification to this Request shall be made in writing by addendum and mailed to all vendors who received the original request. Only written communications are binding.

- 1.4 **Cost of Preparing Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the vendor. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request. All responses will become the property of the State of Kansas and will be a matter of public record subsequent to signing of the contract or rejection of all bids.
- 1.5 **Evaluation of Proposals:** Award shall be made in the best interest of the State as determined by the Procurement Negotiating Committee or their designees. Consideration may focus toward but is not limited to:
 - 1.5.1 cost. Vendors are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations;
 - 1.5.2 response format as required by this Request;
 - 1.5.3 adequacy and completeness of proposal;
 - 1.5.4 vendor's understanding of the project;
 - 1.5.5 compliance with the terms and conditions of the Request;
 - 1.5.6 experience in providing like services;
 - 1.5.7 qualified staff;
 - 1.5.8 methodology to accomplish tasks.
- 1.6 **Acceptance or Rejection:** The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Request; and unless otherwise specified, to accept any item in a proposal.
- 1.7 **Contract:** The successful vendor will be required to enter into a written contract with the State. The vendor agrees to accept the provisions of form DA-146a, Contractual Provisions Attachment, which is incorporated into all contracts with the State and is attached to this Request.
- 1.8 **Contract Documents:** This Request and any amendments and the response and any amendments of the successful vendor shall be incorporated along with the DA-146a into the written contract which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

 - 1.8.1 Form DA-146a;
 - 1.8.2 written modifications to the executed contract;
 - 1.8.3 written contract signed by the parties;
 - 1.8.4 this Request including any and all addenda; and
 - 1.8.5 Contractor's written proposal submitted in response to this Request as finalized.
- 1.9 **Contract Formation:** No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered.
- 1.10 **Open Records Act (K.S.A. 45-205 et seq.):** All proposals become the property of the State of Kansas. Kansas law requires all information contained in proposals to become open for public review once a contract is signed or all proposals are rejected.
- 1.11 **Federal, State and Local Taxes-Governmental Entity:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Request.

The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotations.

- 1.12 **Debarment of State Contractors:** Any vendor who defaults on delivery as defined in this Request may, be barred (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the secretary of administration, after consultation with the contracting agency and the attorney general, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The secretary, after consultation with the contracting agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment under subsection (b), in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.
- 1.13 **Insurance:** The State shall not be required to purchase any insurance against loss or damage to any personal property nor shall the State establish a "self-insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

SECTION II PROPOSAL INSTRUCTIONS

- 2.1 **Preparation of Proposal:** Prices are to be entered on the proposal cost form provided herein. Computations and totals shall be indicated where required. The Committee has the right to rely on any price quotes provided by vendors. The vendor shall be responsible for any mathematical error in price quotes. The Committee reserves the right to reject proposals which contain errors.

ALL COPIES OF COST PROPOSALS SHALL BE SUBMITTED IN A SEPARATE SEALED ENVELOPE OR CONTAINER SEPARATE FROM THE TECHNICAL PROPOSAL. THE OUTSIDE SHALL BE IDENTIFIED CLEARLY AS "COST PROPOSAL OR TECHNICAL PROPOSAL" WITH THE REQUEST NUMBER AND CLOSING DATE.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other vendor, competitor or public officer/employee.

Technical proposals shall contain a concise description of vendor's capabilities to satisfy the requirements of this Request For Proposal with emphasis on completeness and clarity of content. Repetition of terms and conditions of the Request For Proposal without additional clarification shall not be considered responsive.

Vendors are instructed to prepare their Technical Proposal following the same sequence as the Request For Proposal.

- 2.2 **Submission of Proposals:** Vendor's proposal shall consist of:
- Two (2) copies of the technical Proposal, including literature and other supporting documents;
 - Two (2) copies of the cost proposal (packaged as described in Section 2.1);

Vendor's proposal, sealed securely in an envelope or other container, shall be received by August 15, 2005, addressed as follows:

**Kansas Department of Health and Environment
Attn: Aurora Shields
Proposal # 2005-01
Closing: August 15, 2005
740 Forbes Field
Topeka, KS 66620- 0001**

Faxed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration.

- 2.3 **Signature of Proposals:** Each proposal shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line.
- 2.4 **Acknowledgment of Addenda:** All vendors shall acknowledge receipt of any addenda to this Request. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Changes to this Request shall be issued only by the Kansas Department of Health and Environment in writing.

- 2.5 **Modification of Proposals:** A vendor may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.
- 2.6 **Withdrawal of Proposals:** A proposal may be withdrawn on written request from the vendor to the Procurement Officer at the Kansas Department of Health and Environment prior to the closing date.
- 2.7 **Proposal Disclosures:** At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released.

Bid results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a bid tabulation from the Kansas Department of Health and Environment. Bid results can be obtained by sending (do not include with bid):

1. A check for \$3.00, payable to the State of Kansas and
2. A self-addressed, stamped envelope;
3. Contract Proposal Number,

Send to:
Kansas Department of Health and Environment
Attention: Aurora Shields
Bid Results/Copies
740 Forbes Field
Topeka, KS 66620-0001

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to ashields@kdhe.state.ks.us or calling 785-296-6198 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

- 2.8 **Notice of Award:** An award is made on execution of the written contract by all parties. Only the State is authorized to issue news releases relating to this Request, its evaluation, award and/or performance of the contract.

SECTION III GENERAL PROVISIONS

- 3.1 **Term of Contract:** The term of this contract is for a 1 year(s) period from the date of award with additional one (1) year renewal(s) by written agreement of the parties.
- 3.2 **Inspection:** The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of this Request.
- 3.3 **Termination for Cause:** The Kansas Department of Health and Environment may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
- 3.3.1 the Contractor fails to make delivery of goods or services as specified in this contract; or
- 3.3.2 the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Kansas Department of Health and Environment shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Kansas Department of Health and Environment shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

- 3.4 **Termination for Convenience:** The Kansas Department of Health and Environment may terminate performance of work under this contract in whole or in part whenever, for any reason, the Kansas Department of Health and Environment shall determine that the termination is in the best interest of the State of Kansas. In the event that the Kansas Department of Health and Environment elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
- 3.5 **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

**Kansas Department of Health and Environment
Division of Health and Environmental Laboratories
Environmental Laboratory Improvement Program
Aurora Shields
740 Forbes Field
Topeka, Kansas 66620-0001**

or to any other persons or addresses as may be designated by notice from one party to the other.

- 3.6 **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment pro rated for that portion of the contract period services were provided to and/or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

- 3.7 **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.
- 3.8 **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.
- 3.9 **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.
- 3.10 **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

- 3.11 **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified SubContractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any SubContractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

- 3.12 **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State.
- 3.13 **Confidentiality:** The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.
- 3.14 **Reviews and Hearings:** The Contractor agrees to advise the Kansas Department of Health and Environment of all complaints of recipients made known to the Contractor and refer all appeals or fair hearing requests to the Kansas Department of Health and Environment. The State has the discretion to require the Contractor to participate in any review, appeal, fair hearing or litigation involving issues related to this contract.

- 3.15 **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.
- 3.16 **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
- 3.17 **Hold Harmless:** The Contractor shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

- 3.18 **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
- 3.19 **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
- 3.20 **Retention of Records:** Unless the State specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of ten (10) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds ten (10) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the ten (10) year post-contract period. Delivery of and access to the records shall be at no cost to the state.

- 3.21 **Federal, State and Local Taxes Contractor:** The State make no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
- 3.22 **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

- 3.23 **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
- 3.24 **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State.
- This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.
- 3.25 **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
- 3.26 **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
- 3.27 **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
- 3.28 **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas.
- 3.29 **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.
- 3.30 **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.
- 3.31 **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.
- 3.32 **Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract:** Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state Contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
- 3.33 **Competition:** The purpose of this Request is to seek competition. The vendor shall advise the Kansas Department of Health and Environment if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Kansas Department of Health and Environment no later than five (5) business days prior to the bid closing date. The Kansas Department of Health and Environment reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Request.

3.34 **Political Subdivisions:** Political subdivisions (City, County, School Districts and etc.) are permitted to utilize contracts administered by the Kansas Department of Health and Environment. Please state on your response one of the following statements:

- (1) "This pricing IS available to Political Subdivisions of the State of Kansas";
or
- (2) "This pricing IS NOT available to Political Subdivisions of the State of Kansas".

Awards shall not be based on which of these statements is selected. However, conditions included in this contract shall be the same for political subdivisions.

The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.

3.35 **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, vendor shall not be entitled to make or assert claim for damage by reason of said delay.

3.36 **Acceptance:** No contract provision or use of items by the State shall constitute acceptance or relieve the vendor of liability in respect to any expressed or implied warranties.

3.37 **Breach:** Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.

If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application To this end the contract terms and conditions are severable.

3.38 **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

3.39 **Disclosure of Proposal Content:** The laws of the State of Kansas require public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. No proposals shall be disclosed until after a Contract Award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a Contract Award is withdrawn, or otherwise in the normal course of business.

Trade secrets or proprietary information legally recognized as such and protected by law may be withheld if they are clearly labeled "Proprietary" in the margin of each individual page where they appear in the proposal response package. Pricing information is normally not considered proprietary. The Vendor's entire proposal response package shall not be considered proprietary.

SECTION IV SPECIAL PROVISIONS

4.1 **Proposal Format:** The following information shall be part of the technical proposal: **Vendors are instructed to prepare their Technical Proposal following the same sequence as this section of the Request For Proposal.**

- (1) Transmittal letter which includes the following statements:
 - (a) that the vendor is the prime Contractor and identifying all subContractors;
 - (b) that the vendor is a corporation or other legal entity;
 - (c) that no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
 - (d) that the vendor does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
 - (e) that no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
 - (f) that the vendor presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
 - (g) that the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above-statements; and
 - (h) whether there is a reasonable probability that the vendor is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the vendor which would relate to the performance of this contract. If the statement is in the affirmative, the vendor is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the vendor will obtain a similar certification and authorization and failure to do so will constitute grounds for termination of the contract at the option of the State.

4.2 **Vendor's Qualifications:** The vendor must include a discussion of the vendor's corporation and each subContractor if any. The discussion shall include the following:

- (a) date established;
- (b) ownership (public, partnership, subsidiary, etc.);
- (c) number of personnel, full and part-time, assigned to this project by function and job title;
- (d) data processing resources and the extent they are dedicated to other matters;
- (e) location of the project within the vendor's organization;
- (f) relationship of the project and other lines of business; and
- (g) organizational chart

- 4.3 **SubContractors:** The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subContractors. The Contractor is totally responsible for all actions and work performed by its subContractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subContractor.
- 4.4 **Qualifications:** A description of the vendor's qualifications and experience providing the requested or similar service including resumes of personnel assigned to the project stating their education and work experience. The vendor must be an established firm recognized for its capacity to perform. The vendor must be capable of mobilizing sufficient personnel to meet the deadlines specified in the Request.
- 4.5 **Timeline and Methodology:** A timeline for implementing services.
- 4.6 **Payment:** The Contractor's cost shall be paid by the laboratory using their services. The laboratory shall make payments directly to the Contractor. No payment will be exchanged between the State and the Contractor. NOTE: The use of the word "laboratory" through this document means a laboratory seeking primary accreditation from the KDHE. The word laboratory in this document does not mean the KDHE, Division of Health and Environmental Laboratories.
- 4.7 **Vendor Contracts:** Include a copy of any subcontracts proposed.
- 4.8 **Submission of the Bid:** Submission of the bid will be considered presumptive evidence that the vendor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies. Later claims for labor, work, materials, and equipment required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to the State of Kansas.
- 4.9 **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.
- 4.10 **Contact:** Any correspondence by potential bidders, with the using agency, must be documented in writing and submitted to the procurement officer, to be considered for any possible addenda, and/or in the evaluation of the bid. Any change in specification shall be authorized only by the Kansas Department of Health and Environment and will be issued by written addendum.
- 4.11 **Implied Requirements:** All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the vendor's response.
- 4.12 **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
- 4.13 **Technical Literature:** All bids shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.
- 4.14 **Default on Delivery:** Any vendor who defaults on delivery as defined in this Request may, be barred from bidding on any subsequent Request for a period to be determined.
- 4.15 **Indefinite Quantity Contract:** This Request is for an open-ended contract between a vendor and the State to furnish an undetermined quantity of a good or service in a given period of time. An estimated quantity based on past history or other means may be used as a guide.

- 4.16 **Prices:** Prices shall remain firm for the entire contract period.
- 4.17 **Price Adjustments:** On the yearly anniversary date of this contract, prices as bid may remain at the price bid or may be based on a price adjustment, either upward or downward, keyed to industry and changes. Contractor shall furnish figures at least thirty (30) days prior to expiration date to substantiate any claim for increase. If parties to the contract can not agree on renewal terms, it is hereby understood that the contract will be re-bid.
- 4.18 **Documentation:** Examples of documentation delivered by the manufacturer with purchase of items shall be included. Vendor must be able to deliver additional copies (beyond the response set) of documentation on an immediate basis for use in the evaluation process. Within the section, vendors may use any format. Include detailed, standard, published literature describing each equipment item and feature offered. If asked, vendors shall deliver additional copies of response documentation immediately. Within the section, vendors may use any format. Include detailed, standard, published literature describing each item and feature offered.
- 4.19 **References:** Provide Four (4) references. References shall have purchased similar items from the vendor in the last year. References shall show firm name, contact person, address, and phone number. Vendor employees and the buying agency shall not be shown as references.
- 4.20 **Certification of Specifications Compliance:** By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request.
- 4.21 **Certification of Materials Submitted:** The response to this request, together with the specifications set forth herein and all data submitted by the vendor to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful vendor and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
- 4.22 **Experience:** All bidders must have a minimum of three (3) years continuous active participation in the applicable industry as a distinct company, providing equipment and systems comparable in size and complexity to the equipment and systems specified. Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed.
- 4.23 **Award:** Award will be by line item or group total, whichever is in the best interest of the State of Kansas.

SECTION V STATEMENT OF WORK

5.1 Background and Scope: Assessments of environmental laboratories are a requirement of the Kansas Department of Health and Environment (KDHE) laboratory accreditation process. The assessment ensures that the environmental laboratory is in compliance with Kansas regulations and the National Environmental Laboratory Accreditation Conference (NELAC) standards. The KDHE will engage the use of a Contractor (third party assessor) to conduct assessments of environmental laboratories seeking Kansas primary accreditation at a per need basis. The KDHE offers accreditation under the Safe Drinking Water Act, Clean Water Act, and Resource Conservation and Recovery Act in the areas of Chemistry, Microbiology, and Aquatic Toxicity. Contract will be awarded to one or more companies, based upon RFP results. The contract does not guarantee a minimum amount of work.

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5.2 Services to be Provided: The Contractor will have the responsibility for conducting assessments for national accreditation as assigned by KDHE, Environmental Laboratory Improvement Program Office (ELIPO). The Contractor shall be required to have a lead assessor and at least two other assessors. The following guidelines shall be required from the Contractor:

- (a) The Contractor shall conduct assessments in accordance to K.A.R. 28-15-35 and 28-15-36 and the NELAC standards;
- (b) The Contractor shall obtain approval from KDHE, ELIPO for the number of assessors to be used for conducting an assessment of a laboratory. The number of assessors conducting the assessment must be appropriate for the laboratory's scope and testing;
- (c) The Contractor shall schedule an assessment with the laboratory within 15 days after receiving notification from KDHE, ELIPO. The assessment shall be conducted no later than 60 calendar days following the scheduling. Any changes to this timeframe must be approved by KDHE, ELIPO on a case-by-case basis;
- (d) The Contractor shall provide a copy of the invoice (which was billed to the laboratory) and a copy of the check received from the laboratory to KDHE, ELIPO within 15 days of receiving the check;
- (e) The on-site assessment shall be conducted during the laboratory's normal working hours;
- (f) The KDHE, ELIPO shall be furnished with a report documenting any deficiencies found by the assessor(s). This report shall be known as an assessment report;
- (g) The Contractor shall confine the laboratory assessments and decision making processes to those matters specifically related to the fields of accreditation of the accreditation being sought by a laboratory;
- (h) The Contractor shall not offer consultancy or other services which may compromise the objectivity or impartiality of their decisions and the assessment process;
- (e) The Contractor must ensure that their employees are competent and comply with the applicable provisions of state regulations and procedures;
- (j) The Contractor shall ensure that their employees comply with the confidentiality requirements of the KDHE;
- (k) The Contractor shall ensure that their employees are not directly involved with the laboratory seeking Kansas accreditation; or any other affiliation which would compromise impartiality in the accreditation process; and
- (l) The Contractor's cost shall be paid by the laboratory seeking primary accreditation from the KDHE. The laboratory shall make payments directly to the Contractor. NOTE: The use of the word "laboratory" through this document means a laboratory seeking primary accreditation from the KDHE. The word laboratory in this document does not mean the KDHE, Division of Health and Environmental Laboratories.

5.3 Minimum Assessor Qualifications Requirements: Each assessor shall meet the following requirements:

- (1) An assessor shall be an experienced professional and hold at least a Bachelor's degree in a scientific discipline or have equivalent experience in environmental laboratory assessment.

- (2) Each assessor shall have satisfactorily completed a training program. The training program used shall meet the requirements under the NELAC standards. This program shall include:
 - (a) Participation in the NELAC Basic Training Course, including attainment of a passing score on the written examination for the course;
 - (b) Participation in at least four actual NELAC assessments under the supervision of a qualified assessor (assessors employed by an accrediting authority, either directly or as a third party); and
 - (c) Completion of the applicable technical training requirements as specified by the NELAC standards. In the absence of technical training availability, this requirement may be substituted by demonstrated experience in the discipline.
- (3) In addition, the assessors shall:
 - (a) Be familiar with the relevant regulations, accreditation procedures, and accreditation requirements;
 - (b) Have a thorough knowledge of the relevant assessment methods and assessment documents;
 - (c) Be thoroughly familiar with the various forms of records (hardcopy and electronic) used by environmental laboratories;
 - (d) Be thoroughly cognizant of data reporting, analysis, and reduction techniques and procedures;
 - (e) Have a working knowledge and be conversant with the specific tests or types of tests for which the accreditation is sought and, where relevant, with the associated sampling and preservation procedures;
 - (f) Be able to communicate effectively, both orally and in writing;
 - (g) Before an assessor can conduct assessments, the KDHE, ELIPO shall qualify the individual to ensure the individual meets the program requirements; and
 - (h) Each assessor shall sign a statement before conducting an assessment certifying that no conflict of interest exists and provide any supporting information as required by the KDHE, ELIPO. Failure to provide this information makes the proposed assessor ineligible to participate in the assessment.

5.4 Deliverable: The KDHE, ELIPO shall be furnished with all materials gathered during a laboratory assessment. These materials may include but are not limited to assessment reports, checklists, correspondence, quality manuals, laboratory data, conflict of interest form, and confidential business information form.

5.5 Timeline: The deliverables shall be provided to the KDHE, ELIPO within 30 days from the on-site assessment.

5.6 Compliance with Quality Documents: Throughout the term of the contract, the Contractor shall comply with the Quality Documents that were submitted with the company's proposal and accepted by the KDHE, ELIPO. The KDHE, ELIPO may require changes to the documents if they conflict with the RFP or with applicable laws and regulations.

5.7 Payment for Assessment Cost: All Contractor's cost shall be paid by the laboratory using their services. The laboratory shall make payments directly to the Contractor. The Contractor will provide the laboratory with a cost estimate before the assessment begins. A copy of the estimate shall be submitted to KDHE, ELIPO at the time of the scheduling of the assessment. NOTE: The use of the word "laboratory" through this document means a laboratory seeking primary accreditation from the KDHE. The word laboratory in this document does not mean the KDHE, Division of Health and Environmental Laboratories.

5.8 Payment for Travel Expenses: The Contractor shall be reimbursed for travel expenses related to the on-site assessment by the laboratory according to the Kansas Travel Regulations which can be found at (<http://da.state.ks.us/ar/employee/travel/travbk.htm#>) Section 4000. NOTE: The use of the word "laboratory" through this document means a laboratory seeking primary accreditation from the KDHE. The word laboratory in this document does not mean the KDHE, Division of Health and Environmental Laboratories.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/Contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to Contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to Contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the Contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the Contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a Contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this contract on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a Contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."